

I've Been Sued!

What Should I Do? What Happens Next?

Courtesy of Golden Eagle Insurance Corporation

WHAT DO I NEED TO DO?

1. Call your broker or notify your insurance company as soon as possible.
2. Identify who was served with the lawsuit and the date(s) of service.
3. Do not give statements or discuss the case with anyone other than your insurance agent, a representative of your insurance company, or your attorney.
4. Secure all evidence, records and documents that may be needed for the defense of your case.
5. Identify witnesses and employees who have knowledge of the incident.
6. Provide full cooperation to your insurance company's claims staff and to your defense counsel.

WHAT HAPPENS NOW?

Summons and Complaint

The litigation process begins when the plaintiff, or his/her attorney, files a complaint (lawsuit) with the court. In the complaint, the plaintiff states causes of action that set forth the allegations against the defendant(s) and the injury or damage suffered, as well as the amount of monetary damages or other relief sought.

The plaintiff then serves the complaint on the defendant(s) along with a summons. A summons is a legal notice to the defendant(s) that a lawsuit has been filed and that a judgment will be entered against the defendant(s) if they fail to answer the complaint within the statutory time limit. For example, in the California State court, defendants have 30 days in which to file an answer to a complaint.

An answer is a written pleading filed by the defendant(s) addressing the facts alleged in the complaint. The defendant(s) may also file a cross-complaint, which is a claim against the other party, who may or may not be a current party to the lawsuit.

Failure to file an answer with the court could result in a default judgment whereby the defendant(s) lose the right to a defense, and may also be liable for the plaintiff's claimed damages and expenses.

If you are served with a summons and complaint, you must **immediately notify** your insurance agent or insurance company. Failure to promptly notify the insurance carrier of a lawsuit may result in the forfeit of an insured's rights under the policy.

Not all claims are covered under the policy of insurance. Consequently, there are some situations in which there is no duty to defend or indemnify an insured for an uncovered claim, or there is a duty to defend a claim subject to a reservation of rights. Coverage issues must be discussed with the examiner handling the claim.

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WHAT HAPPENS NOW? (CONTINUED)

Discovery

During the discovery phase of the litigation process, each party has the opportunity to gather information regarding the opposing party's case. Some of the major discovery tools in a civil case are:

- **Interrogatories** – Interrogatories are written questions served on a party that must be answered and filed with the court within a specified time frame. Your attorney can assist you in completing the responses.
- **Deposition** – A deposition is a statement made under oath by a party or witness in response to oral questions. The deposition proceeding is transcribed by a court reporter. Your defense counsel will assist you prior to and during the deposition.
- **Request for Production and Inspection** – One party in the litigation asks another party to produce documents and records.
- **Request for Admission** – One party asks the other party to admit to a fact or to verify the authenticity of an evidentiary document.
- **Independent Medical Examination (IME)** – A physical or psychological examination of the plaintiff by a doctor hired by the defense.

Alternate Dispute Resolution (ADR)

The trend today is toward resolving cases prior to incurring the time and expense associated with litigation. Arbitration, mediation, and settlement conferences serve as good tools for resolving cases.

Although your attendance may not be mandatory, you are always welcome to participate in the ADR process.

- **Mediation** – The parties meet with a neutral intermediary who attempts to assist in resolving the case. Mediation is voluntary and not binding. The parties normally share the cost of mediation.
- **Arbitration** – Parties present their cases to an impartial third party or panel for a decision. The parties may agree before the arbitration to make the decision/award binding. If the arbitration is not binding, either party may reject the decision/award. Arbitrations can be voluntary or court ordered.
- **Mandatory Settlement Conference** – The parties meet at the courthouse with the judge to attempt to settle the case. Participation is mandatory, but the judge cannot force the parties to settle the matter against their will.

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WHAT HAPPENS NOW? (CONTINUED)

Trial

If the case cannot be resolved through ADR, it will proceed to trial. Most cases are tried in front of a judge and jury. However, the parties can agree to a bench trial, which is a trial in front of a judge without a jury. Each side has an opportunity to make an opening statement to summarize what it will attempt to establish during the trial.

The plaintiff puts on his/her case first by calling witnesses and presenting evidence to support the allegations against the defendant(s). Counsel for the defendant(s) has the opportunity to cross-examine each witness after the plaintiff's attorney has completed questioning.

After the plaintiff rests his/her case, counsel for the defendant(s) has the opportunity to present a case on behalf of the defendant(s) to refute the plaintiff's allegations. The plaintiff's counsel can cross-examine defense witnesses. After the defense has rested its case, the plaintiff has the opportunity to present rebuttal evidence before each side makes its closing argument.

After the closing arguments, the judge delivers instructions to the jury, advising the jury of the law, its applicability, and the plaintiff's burden of proof. The jury then deliberates the case until a verdict is reached, or until it becomes clear that they will not be able to reach a verdict.

In California, at least three-fourths of the jury has to agree upon the verdict in a civil case. If it is a bench trial, the judge renders the decision.

A FINAL COMMENT

Litigation is a horribly time-consuming, expensive, frustrating process. It should be used as a last resort only. Prior to litigation, it is recommended that you make every possible effort to resolve the conflict.